

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Petition for Waiver Filed by

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Brazos Telecommunications, Inc.
and Brazos Telephone Cooperative, Inc.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Concerning the Definition of "Study Area" Contained in the
Part 36 Appendix-Glossary of the Commission's Rules

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) CC Docket No. 96-45
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) AAD 94-112
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To: Chief, Common Carrier Bureau

**REQUEST FOR REMOVAL OF WAIVER CONDITION
CONSISTENT WITH COMMISSION POLICY**

Brazos Telephone Cooperative, Inc. and its wholly owned subsidiary, Brazos Telecommunications, Inc. (collectively "Brazos") submits this request for the removal of the "cap" on the Universal Service Fund ("USF") cost allocation support payments established by the Commission's Order adopted August 8, 1995, with respect to Brazos's study area.¹ The Order authorized the transfer of local exchange facilities consisting of five exchanges serving 3796 access lines into Brazos's existing study area. As a condition to the grant of study area waiver, the Order imposed a limitation or "cap" on USF disbursements to the Brazos study area of \$598,866 per annum. Consistent with the overarching Commission policy conclusions now

¹ Memorandum Opinion and Order, AAD 94-112, 11 FCC Rcd 5536 (1995) ("Order"). An Application for Review, filed June 7, 1999, is pending at the Commission concerning the application of the Commission's USF rules with respect to situations involving acquisitions and sales.

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established by the Memorandum Opinion and Order on Reconsideration, released September 9, 1999,² Brazos requests that its individual USF cap be removed as of January 1, 2000.³

Brazos expects that many other similarly-situated companies will be seeking removal of their individual USF caps consistent with the Bureau's newly articulated policy conclusions. In order to avoid the administrative burden of repeatedly applying its new policy to a multitude of almost identical requests, Brazos respectfully suggests that the Commission simply clarify, on its own motion, its policy by lifting the 57 remaining USF caps.

In the absence of this clarification, Brazos respectfully requests expedited action in light of the consistency of this request with the recent policy conclusions and to accommodate the completion of the USF administration prior to January 1, 2000. In support thereof, Brazos submits the following:

I. Background

On August 5, 1994, Brazos and GTE filed a joint petition for waiver of the frozen study area boundaries. On August 8, 1995, the FCC released its Order authorizing the removal of exchanges from the GTE Texas study area and the transfer of the five exchanges serving 3796 access lines into its existing study area subject to the condition that the annual USF support provided to the existing study area would not exceed the amount for which that study area was

² Memorandum Opinion and Order on Reconsideration, AAD 93-93, 95-72, 95-30, 97-21, 97-23, 97-117, 98-44, 98-53, DA 99-1845, released September 9, 1999 ("Cap Removal Order").

³ Although this Request references an effective date of January 1, 2000, Brazos does not waive its right to raise issues in the future with respect to the applicability of the Commission's policy or rules to prior periods beginning May 8, 1997.

qualified in August of 1995.⁴ The National Exchange Carrier Association (“NECA”) was ordered not to distribute USF payments exceeding the limitation.

Although Brazos was aware in 1994 that the facilities to be purchased were substandard, and that the Bureau would likely impose a limit on USF recovery, Brazos, nevertheless, fully expected that a rational network cost recovery application would be ultimately resolved consistent with the public interest.⁵ Brazos believed that rational cost recovery would be possible by removal of the limit or the implementation of a new USF plan, under which the reasonable high costs would be addressed. Although the Brazos study area’s 2000 USF receipts, based on data forwarded from the Universal Service Administrative Corporation (“USAC”) to the Commission on October 1, 1999, will likely be less than the \$598,866 cap imposed in the Order, grant of this request will allow Brazos to proceed in coming months and years with network upgrades with the understanding that the costs incurred in providing advanced services in rural Texas will be addressed by USF cost recovery.

II. Removal of Brazos’s Cap is Consistent with Established Commission Policy

On September 9, 1999, the Commission issued its Cap Removal Order, addressing petitions for waiver and reconsideration of the USF conditions applied to 32 study areas. While the Commission noted its policy of monitoring USF impact on carriers involved in study area changes and capping carriers at some estimate of post-upgrade costs, the Commission correctly

⁴ Order at ¶ 9.

⁵ Since the acquisition in 1995, Brazos has installed new digital central office facilities, implemented equal access, deployed interoffice fiber transmission and backbone fiber facilities, and upgraded customers to single party service. Brazos has invested approximately \$2 million in its network over the past four years.

concluded that limiting the duration of those caps is appropriate and in the public interest.⁶

Accordingly, the Commission granted petitioners' requests to lift the individual caps placed on their high cost loop support on a going-forward basis.⁷ As of January 1, 2000, the high cost loop support for the 32 study areas will then be based upon the average cost of all their lines.

The Commission acknowledged that "caps of unlimited duration may hinder petitioners' incentive and ability to extend service to previously unserved areas, as well as to upgrade service to their existing customers."⁸ The Commission also determined that "limiting the petitioners to the high cost loop support estimated in their original petitions, in perpetuity, is not necessary to accomplish the [Commission's] policies . . ." The Commission "concluded that . . . the individual caps placed on the carriers' high cost loop support have served their purpose . . ."⁹ The Commission also recognized correctly that lifting the caps on petitioners' high cost support will increase the affected LECs' incentives and ability to extend service to previously unserved areas and upgrade their networks."¹⁰

Brazos's conditions are effectively identical to those petitioners addressed in the Cap Removal Order. Therefore, removal of Brazos's individual USF cap is both warranted by, and

⁶ Cap Removal Order at ¶ 9.

⁷ Cap Removal Order at ¶ 10.

⁸ Id.

⁹ Id.

¹⁰ Cap Removal Order at ¶ 10. See also Federal-State Joint Board on Universal Service: Promoting Development and Subscribership in Unserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 99-204 (rel. Sept. 3, 1999).

consistent with, the Commission's conclusions and policy enunciated in the Cap Removal Order. Like the petitioners addressed in that order, Brazos purchased exchanges several years ago and, in conjunction with its request for study area waiver, provided a reasonable estimate of the costs to upgrade the subject facilities for the provision of basic telephone service to existing and new customers. Continuing to limit Brazos to the high cost loop support estimated in its original petition is not necessary to accomplish the Commission's policies. Further, continued application of the individual cap imposed in August 1995 will hinder Brazos's incentive to continue to invest in advanced services networks and to upgrade existing service, and would jeopardize Brazos's ability to maintain reasonably comparable rates for modern services.

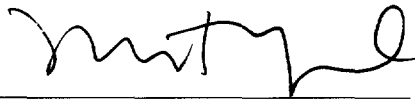
III. Conclusion

Consistent with the Commission's policy established in its Cap Removal Order, Brazos requests that the individual USF cap established by the Commission's Order be removed as of January 1, 2000. Brazos requests that the Commission lift the individual cap placed on its high cost loop support on a going-forward basis so that, as of January 1, 2000, Brazos's high cost loop support payments will be based upon the average cost of all its lines. Adequate USF funding is necessary to allow Brazos to continue to maintain and upgrade its facilities for the provision of universal service to its rural Texas study area. Expedited grant of this request will

serve the public interest by ensuring that Brazos receives adequate universal service funding to recover the costs of its investment and thereby meet its current and future service requirements.

Respectfully submitted,

Brazos Telecommunications, Inc.
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November 5, 1999

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Request for Removal of Waiver Condition Consistent with Commission Policy" of Brazos Telephone Cooperative, Inc. and Brazos Telecommunications, Inc. was served on this 5th day of November, 1999 by hand delivery to the following parties:



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